

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeenn G. Kelly.

Longview Power, LLC

Docket No. EL05-108-000

v.

Monongahela Power Company d.b.a.
Allegheny Power and Allegheny Energy
Supply Company, LLC

ORDER ON COMPLAINT

(Issued July 5, 2005)

1. On May 9, 2005, Longview Power, LLC (Longview) filed a complaint against Monongahela Power Company, d.b.a. Allegheny Power and Allegheny Energy Supply Company, LLC (collectively Allegheny) contending Allegheny has an obligation to permit access and right-of-way for Longview to build a radial line across a 1,117 acre site, at no cost. Allegheny is willing to permit interconnection of the Longview plant, which entails the construction of a substation, or to permit the construction of the radial line upon the payment of fair compensation. The Commission is dismissing the complaint, finding that although Allegheny is required to permit an interconnection, it is not required to allow a customer to construct across its property without fair compensation. The Commission further encourages the parties to use the Commission's Alternative Dispute Resolution service to facilitate discussions regarding the price for building the line.

The Complaint

2. Longview is an independent power producer that is currently developing a 600 MW coal-fired generating facility in Monongalia County, West Virginia, adjacent to the site of Allegheny's 1,107 MW coal-fired Fort Martin Power Plant. Longview alleges that since 2003, it has been attempting to reach agreement with Allegheny to construct a radial line to interconnect Longview's proposed generating facility to Allegheny's 500 kV Fort Martin Substation, which is also located on the 1,117 acre site and thereby interconnect with Allegheny's 500 kV Pruntytown transmission line. The proposed radial line would have to cross the Fort Martin site and Longview has proposed two different right-of-way options.

3. Longview asserts that its first proposed right-of-way (Option 1) was rejected, by Allegheny because it would “pose a threat to the slope stability” and “appears to pass over sediment ponds, the maintenance of which would be restricted by overhead lines.”¹ Longview offered to pay Allegheny \$10,000 for the approximately 17 acres that would be used as transmission right-of-way easement for its radial line. Allegheny suggested an alternate interconnection route. Longview then proposed a second right-of-way (Option 2), in which it modified Allegheny’s suggested route because of a property owner’s unwillingness to grant an easement to Longview. Allegheny initially rejected Option 2 because it would interfere with a future ash landfill that Allegheny would like to build. Allegheny also rejected Longview’s offer to provide replacement ash disposal capacity to compensate for any lost capacity in the future ash landfill. Later, Allegheny agreed to grant Option 2 if Longview provided for the future disposal of 1.1 million cubic yards of ash or pay Allegheny \$5.5 million for the lost disposal capacity.

4. In its complaint, Longview argues that Allegheny is violating the PJM Interconnection, L.L.C. Open Access Transmission Tariff (PJM OATT) by refusing to provide information Longview and PJM requested regarding Allegheny’s rejection of Option 1. Longview states that its transmission line consultants, General Electric Company and Power Engineers, Inc., walked the proposed route of Option 1 and did not note any obvious areas of soil or slope stability concern. Longview contends that it repeatedly requested the results of any soil stability studies, but Allegheny refused to provide them. PJM also requested these results; however, Allegheny responded that the study was performed by its independent engineering firm, and is proprietary.

5. Specifically, Longview argues that Allegheny is violating section 98.1 of the PJM OATT, which states that “each Construction Party shall make available to each other Construction Party information necessary...to carry out obligations and responsibilities under this Subpart [F (Standard Construction Terms and Conditions)] of the Tariff.” Longview asserts that Allegheny has refused to provide documentation to support why Option 1 presents excessive environmental and engineering risks. Longview further states that Allegheny is in violation of section 97 of the PJM OATT which establishes requirements for using and disclosing confidential information and does not allow a party to refuse to provide this information.

¹ See Longview’s complaint at P 7.

6. Longview alleges that Allegheny is also violating Order Nos. 2003 and 2003-A² and the PJM OATT by demanding compensation from Longview for Option 2. Longview contends that it offered to pay Allegheny \$2 million for the lost disposal capacity upon the latter of: 1) the completion of the transmission line; or 2) the commercial operation of the new ash disposal facility. However, Allegheny rejected Longview's offer and requested \$5.5 million. Longview responded to Allegheny's request by proposing to pay the \$5.5 million over a ten-year period commencing after the first full year of operation of the ash landfill. Allegheny responded by offering that Longview pay either: 1) \$5.5 million payable upon execution of the option agreement; 2) \$7.8 million payable on some mutually agreed upon date in 2009; or 3) \$1.9 million in 5 annual payments commencing upon some mutually agreed upon date in 2009.

7. Longview contends that Allegheny's request violates the PJM OATT³ and Article 5.12 of the Large Generator Interconnection Agreement (LGIA)⁴ which

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *reh'g pending*; *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004) (Order No. 2003).

³ *Citing* PJM OATT section 82.6, which provides in part: The Interconnection Transmission Owner and the Interconnection Customer herein grant each other at no charge such rights of access to areas that it owns or otherwise controls as may be necessary for the performance of their respective obligations, and exercise of their respective rights, pursuant to this Subpart F, provided that either of them performing the construction will abide by the safety, security, and work rules applicable to the area where construction activity is occurring.

⁴ **5.12 Access Rights.** Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of

require Allegheny to provide access “at no charge”, unless Allegheny can prove that this access would unreasonably disrupt or interfere with its normal operation. According to Longview, Allegheny’s only documented plan to construct an ash landfill is a 1982 site plan, and Longview argues that this alone is not sufficient evidence that Allegheny should be compensated.

8. Longview further asserts that Allegheny is attempting to use the interconnection process to impede Longview’s generating facility in order to protect its own generating facilities from competition. Longview argues that Allegheny’s intervention in Longview’s filing for a Generating Facility Siting Certificate with the West Virginia Public Service Commission (West Virginia Commission) demonstrates this. Longview states that Allegheny encouraged the West Virginia Commission to consider the consequences of the Longview project on other aspects of West Virginia’s economy, and asked the West Virginia Commission to consider that Longview’s profits on the sale of its generation will not benefit West Virginia ratepayers.

9. Longview provides documentation in support of its claim, including a filing by PJM in Docket No. ER04-457-002, in which PJM states that its tariff unequivocally prohibits transmission owners from unreasonably refusing to provide an interconnection customer with access (whether in the form of a right-of-way or other reasonable access rights) to property owned or controlled by the transmission owner to enable the customer to build a required interconnection facility on the customers side of the interconnection.⁵ Longview also includes a letter from PJM to Allegheny dated October 14, 2004, in which PJM states that PJM Transmission Owners, pursuant to the PJM OATT, are generally obligated to build all transmission owner interconnection facilities (which include network upgrades) that are necessary to effectuate an interconnection. PJM further states that while it does not take a position on whether Option 1 is appropriate, Allegheny’s conclusory statements are insufficient and that greater detail should be provided.⁶

this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

⁵ See Exhibit 4 to Longview’s complaint at 9-10, PJM’s Answer *citing* PJM OATT, sections 54.11, 55.7, and 82.6

⁶ See Exhibit 29 to Longview’s complaint.

10. Longview concludes that the cited portions of Order No. 2003 and the PJM OATT require Allegheny, a transmission provider, to grant access at no cost to a generator for the construction, operations, and maintenance of interconnection facilities. Longview therefore requests that the Commission order Allegheny to: (1) provide interconnection access at no cost via Option 1 under reasonable terms and conditions unless Allegheny can reasonably establish with documented evidence that it provides to Longview and PJM that such access would unreasonably disrupt or interfere with Allegheny's normal operations; (2) provide interconnection access to Longview at no cost via Option 2 under the reasonable terms and conditions of the PJM OATT; and (3) comply fully with Order No. 2003 and the PJM OATT.

Notice and Interventions

11. Notice of the complaint was issued by the Commission on May 10, 2005. PJM and the West Virginia Commission filed timely motions to intervene with PJM including a limited comment. In its intervention, PJM recommends that alternative dispute resolution procedures be initiated for this proceeding either through the use of the Commission's Dispute Resolution Services or a settlement judge. Allegheny filed a timely answer denying the allegations of the compliant. In addition, on June 12, 2005, Mr. Jarrett Jamison, III filed a letter in this docket expressing concerns that the Longview transmission project would have adverse community, environmental, and historical preservation impacts. These concerns deal with generating plant siting decisions, which are beyond the scope of this proceeding and should be addressed by the appropriate state or other regulatory bodies with jurisdiction over such issues.

Allegheny's Answer

12. In its answer, Allegheny denies that it has violated the interconnection requirements of Order No. 2003 or the PJM OATT. Allegheny confirms that it rejected Option 1 because that route would cross steep terrain in small valleys leading down to the Monongahela River Valley, and it would require construction over or near the existing sedimentation ponds. Allegheny states that the steep slopes of the Monongahela River Valley contain shales and claystone, which are highly susceptible to landslides, if disturbed. Allegheny contends that neither PJM nor the Commission has the authority to require Allegheny to provide documented evidence explaining its rejection of Option 1.

13. Allegheny further asserts that it is willing to proceed with Option 2 provided it is compensated for the loss of the use of land for which it has had long standing plans. It states that its proposed compensation for the loss of the potential ash landfill site has two components. One is the value of the land itself, a capacity of which it states is \$15,000 an acre or a total of \$313,500. The second is the burden of finding a replacement landfill location. Allegheny estimated this cost at (i) \$5.5 million based on volume of 1.1 million cubic yards of material it would have to dispose of on an

adjacent property and the 20.9 acres used by the right-of-way; and (ii) an alternative disposal cost of \$5 per cubic yard based upon a contract that Allegheny has with an outside contractor for disposal at its other power stations. It claims this option is less than \$6 million for Longview's stated intent to construct a project with an estimated construction cost of \$900 million for the plant and an additional \$50 million for the radial line across its property. It notes that Longview has the option of constructing a new substation on or near its own plant site and connecting directly to the Pruntytown 500 kV line.

14. Allegheny states that Longview misinterpreted the phrase "at no cost" in the PJM OATT, and that Allegheny is entitled to compensation if Longview uses Option 2. Allegheny argues that the phrase "at no cost" does not apply to the use of its property that is permanent and continued. Thus, Longview's interpretation would prevent Allegheny from the continued use of Allegheny's own property. Specifically, Allegheny cites section 82.1.1 of the PJM OATT, which states "Interconnection Customer shall, at its sole cost and expense, design, procure, own and install the Customer Facility and the Customer Interconnection Facilities." Allegheny states that in this case, Longview is the customer and Allegheny is the transmission owner and therefore all costs of construction on the Interconnection Customer side of the interconnection fall on Longview. Allegheny further states that Longview could have placed the Point of Interconnection at a new substation within or adjacent to its plant site, and not burdened Allegheny. Allegheny also states that it plans to begin the permitting process to construct a landfill in 2006, so disposal capacity is available in 2010. Allegheny further asserts that Longview ignores the fact that Allegheny never sought to impose a charge on Longview for its access to facilities on Allegheny's side of the Point of Interconnection.

15. Allegheny further states that PJM's own filing in Docket No. ER04-457-002 states that the PJM OATT requires the transmission owner to provide access to areas under its control as reasonably necessary to permit the other party to perform its obligations under the PJM OATT, including lands which the transmission owner owns or otherwise controls. In Allegheny's view, access is to be provided at no cost for construction, maintenance, safety inspections and the like which are temporary land uses to facilitate the interconnection process. It notes that PJM further stated that the PJM OATT prohibits transmission owners from unreasonably refusing to provide an interconnection customer with access to property owned by the transmission owner. Allegheny asserts that it has provided Longview with reasonable options for a right-of-way, and that it has no obligation to do more. Allegheny further asserts that the obligation under Article 5.12 of Order No. 2003-A deals only with access to property of the transmission owner and does not grant the Interconnection Customer an absolute right to build on the transmission owner's property. In this regard Allegheny cites Order No. 2003-A, which provides in part at P 292 that "Article 5.12 does not require the transfer of the ownership of lands, nor does it give either party

carte blanche to use the lands of the other Party as its own. Instead, Article 5.12 allows Parties reasonable access onto the lands of the other Parties for purposes of facilitating the interconnection process.”⁷

16. Allegheny also rejects Longview’s allegations that Allegheny’s intervention in the West Virginia Commission filing was an attempt to prevent competition. Allegheny states that its negotiations with Longview show this allegation is unfounded. Allegheny further states that because Longview has filed a complaint instead of using the dispute resolution option available under the PJM OATT, Longview must prove that the offer made by Allegheny to provide the use of Option 2 under its price, terms and conditions is unreasonable. Allegheny also contends that Congress has not granted the Commission the authority to order Allegheny to provide the use of its land in Part II of the Federal Power Act (FPA). It argues that as such, Longview does not have a preemptive use of land to construct, own, operate, and maintain its Customer Interconnection Facilities on Allegheny’s property for non-transmission purposes. Allegheny asserts that this conclusion is supported by a provision of the PJM OATT which provides that each party “at its own expense shall maintain in full force and effect all permits, licenses, rights-of-ways and other authorizations as may be required to maintain the Customer Facility and the Customer Interconnection Facilities that the entity owns....”⁸

17. Allegheny concludes that it has offered Longview use of a portion of its lands on reasonable terms that will not interfere with Allegheny’s existing and planned use of the land and that it stands by that offer. It asserts that nothing more is or can be required of it. Allegheny therefore requests that the Commission dismiss the complaint on the merits based on the pleadings, or if the Commission concludes that the matter presents issues of material fact that must be resolved, order the appointment of a settlement judge.

Discussion

18. The essential dispute in this case is whether, under LGIA Article 5.12 and the corresponding provisions of the PJM OATT, Allegheny must provide access to Longview to build a radial line along a significant portion of Allegheny’s property.

⁷ See Allegheny’s answer at 16, *citing* Order No. 2003-A, Article 5.12, and P 292 of the text.

⁸ See Allegheny’s answer at 13, *citing* Subpart 54, section 54.5 of the PJM OATT. Customer Interconnection Facilities are all facilities and equipment owned and/or controlled, operated, and maintained by Interconnection Customer on Interconnection Customer’s side of the Point of Interconnection. See section 50.15A of the PJM OATT.

Allegheny maintains that it has no obligation to allow such access, but is willing to permit access if the parties agree to fair compensation. The Commission finds that Allegheny need not grant Longview's request to build such a radial line in the circumstances presented here, and encourages the parties to use the Commission's Dispute Resolution Services to resolve the dispute over compensation.

19. As Order No. 2003-A states, "...Article 5.12 does not require the transfer of ownership of lands, nor does it give either Party carte blanche to use the lands of the other Party as its own. Instead, Article 5.12 allows Parties reasonable access onto the lands of the other Parties for purposes of facilitating the interconnection process."⁹ Access must be provided at no cost where necessary to facilitate the interconnection process. However, the access required under Article 5.12 is intended to allow the interconnection customer to enter or exit the transmission owner's property at no cost when necessary to undertake needed maintenance or similar work to facilitate an interconnection. The Commission does not interpret Article 5.12 as a right for Longview to take Allegheny's property that it may use for a landfill or for sediment ponds without fair compensation. Instead, Article 5.12 allows Parties reasonable access onto the lands of the other Parties for purposes of facilitating the interconnection process.¹⁰

20. What Longview seeks here is well beyond the limited right of access to facilitate an interconnection afforded by Order No. 2003-A. In fact, Longview could interconnect with Allegheny's existing 500 kV Pruntytown transmission line, which is adjacent to its land, by building a substation, and running a short 500-yard line to the transmission facilities. While Allegheny has an obligation to provide reasonable access to its facilities, the Commission concludes that what Longview seeks here is to avoid the cost of such a substation by crossing Allegheny's property in a manner that has significant engineering and economic consequences for Allegheny. Had this same 1,117 acre site been owned by a private party, Longview would have had to obtain a right to construct a facility on the property to build a line. Indeed, it appears that Longview prefers not to use Option 2 precisely because it has not been able to obtain a right-of-way from another landowner. The fact that the parcel happens to be owned by a transmission owner should not change this result.¹¹

⁹ See Order No. 2003-A at P 292.

¹⁰ *Id.*

¹¹ See *PJM Interconnection, LLC*, 102 FERC ¶ 61,277, at P 21 (2003) (PJM tariff provisions for merchant transmission projects do not provide a right to undertake upgrades on transmission facilities owned by others).

21. Allegheny has stated that it is willing to satisfy its obligation to interconnect either at Longview's facility or via Option 2 if the parties can reach agreement on fair compensation for the use of its land. The Commission will make its Dispute Resolution Services available to the parties to facilitate negotiations on fair compensation for the right-of-way to build the radial line.¹²

The Commission orders:

Longview's complaint against Allegheny is dismissed for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary

¹² The Director of the Dispute Resolution Services is Richard L. Miles, who may be reached at (202) 502-8702 or 1-877-FERC-ADR (1-877-337-2237).